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No. 82-1498

In the Supreme Court of the United States

OCTOBER TERM, 1982

JEFF REICH, PETITIONER

v.

GALEN LARSON, COUNTY CLERK OF COUNTY OF FRESNO,
and
WILLIAM FRENCH SMITH, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE ATTORNEY GENERAL IN OPPOSITION

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TABLE OF AUTHORITIES

Page

Cases:

Allen v. *State Board of Elections*, 393 U.S. 544 3

McCann v. *Paris*, 244 F. Supp. 870 4

Morgan v. *Katzenbach*, 247 F. Supp. 196, rev'd on other grounds, 384 U.S. 641 4

O'Keefe v. *New York City Board of Elections*, 246 F. Supp. 978 4

Perez v. *Rhiddlehoover*, 247 F. Supp. 65 4

South Carolina v. *Katzenbach*, 383 U.S. 301 ..... 3, 4

United States v. *Ramsey*, 353 F.2d 650 4

Constitution and statutes:

U.S. Const. Amend. I 1, 2, 3, 4

Voting Rights Act of 1965:

Section 5, 42 U.S.C. 1973c 3

Section 14(b), 42 U.S.C. 1973*l*(b) 1, 2-3, 4

Section 203(c), 42 U.S.C. 1973aa-1a(c) 1, 2, 4

28 U.S.C. 2403 2

Cal. Elec. Code § 10012 (West Supp. 1983) 1

Page

Miscellaneous:

42 Fed. Reg. 35971 (1977) 2

S. Rep. No. 162 (Pt. 3),
89th Cong., 1st Sess. (1965) 3, 4

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Petitioner seeks review (Pet. 4-8) of the decision of the court of appeals that Section 14(b) of the Voting Rights Act of 1965, 42 U.S.C. 1973*l*(b), vests exclusive jurisdiction in the District Court for the District of Columbia over petitioner's claim that the bilingual assistance requirements in Section 203(c) of the Voting Rights Act of 1965, 42 U.S.C. 1973aa-1a(c), violate the First Amendment as applied to him.

1. Petitioner was a candidate for Fresno County Supervisor for District 5 in the primary and general elections in 1980 (Pet. App. A-2). Pursuant to state law (Cal. Elec. Code § 10012 (West Supp. 1983)), the County Clerk was empowered to print pamphlets containing each candidate's statement of qualifications and to provide a Spanish translation of the statements "to those candidates who wish to have one

* * * " (Pet. App. A-2). Petitioner expressed a preference for having his statement printed only in English and therefore provided no Spanish translation. Relying upon the advice of County Counsel that federal law required the statement to be translated,[1] respondent Larson, the Fresno County Clerk, had the statement translated into Spanish and distributed it in both languages (*id.* at A-2 to A-3).

2. Petitioner filed suit against respondent Larson in the United States District Court for the Eastern District of California, seeking a declaratory judgment that the translation of his statement and its distribution to the voters violated the First Amendment and California's Election Code, and that, to the extent the translation was required by the Voting Rights Act, that law also violated the First Amendment (Pet. App. A-3). Pursuant to 28 U.S.C. 2403, the district court certified to the Attorney General that the constitutionality of a federal statute had been placed in question, and the Attorney General intervened (Pet. App. A-3).

The district court dismissed petitioner's suit for lack of subject matter jurisdiction (Pet. App. A-9 to A-11). The court held that under Section 14(b) of the Voting Rights Act

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[1]Fresno County, California is covered under Section 203(b) of the Voting Rights Act for persons of Spanish heritage. 42 Fed. Reg. 35971 (1977). As such, whenever the county (42 U.S.C. 1973aa-1a(c)):

> provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in [Spanish] as well as in the English language * * *.

of 1965, 42 U.S.C. 1973*l*(b),[2] jurisdiction over all suits filed to challenge the constitutionality of any provision of the Voting Rights Act lies exclusively in the District Court for the District of Columbia (Pet. App. A-9).

The court of appeals affirmed (Pet. App. A-1 to A-3). It found that by enacting Section 14(b) Congress expressly intended for all suits challenging the constitutionality of the Voting Rights Act to be litigated in the District of Columbia. S. Rep. No. 162 (Pt. 3), 89th Cong., 1st Sess. 30-31 (1965) (Pet. App. A-6 to A-7). It also noted (Pet. App. A-4) that this Court had upheld the constitutionality of Section 14(b) against a due process challenge in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 331 (1966), and rejected petitioner's assertion that a different result was warranted simply because his claim was based on the First Amendment (Pet. App. A-7 to A-8).[3]

3. Petitioner presents no question warranting review by this Court. His constitutional challenge to the bilingual assistance provisions (Pet. 4-5, 7-8) has not been adjudicated on the merits by the courts below, and thus is not properly before this Court.

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[2]Section 14(b), 42 U.S.C. 1973*l*(b) provides, in pertinent part:

> No court other than the District Court for the District of Columbia * * * shall have jurisdiction to issue any declaratory judgment pursuant to [section 4 or 5] * * * or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of [this] subchapter * * * or any action of any Federal officer or employee pursuant hereto.

[3]The court of appeals also distinguished this Court's decision in *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), which allowed private litigants to file suit in local federal courts seeking a declaration that a state has implemented a voting change subject to the preclearance requirements in Section 5 of the Act, 42 U.S.C. 1973c (Pet. App. A-4 to A-5). The court held that, unlike the suit in *Allen*, petitioner's suit was not based on Section 5; instead, it directly challenged the validity of one of the provisions in the Voting Rights Act and thus was squarely covered by the jurisdictional limitation in Section 14(b) (Pet. App. A-5).

The only issue is whether the courts below properly held that they lacked jurisdiction over this challenge to the constitutionality of Section 203 of the Act as applied to petitioner. Every court that has been presented with a constitutional challenge to a provision of the Voting Rights Act has held that such actions must be brought in the District Court for the District of Columbia. *United States* v. *Ramsey*, 353 F.2d 650, 656 (5th Cir. 1965); *Perez* v. *Rhiddlehoover*, 247 F. Supp. 65, 71-72 (E.D. La. 1965); *Morgan* v. *Katzenbach*, 247 F. Supp. 196, 198-199 (D. D.C. 1965), rev'd on other grounds, 384 U.S. 641 (1966); *O'Keefe* v. *New York City Board of Elections*, 246 F. Supp. 978, 981 (S.D. N.Y. 1965); *McCann* v. *Paris*, 244 F. Supp. 870, 872 (W.D. Va. 1965); cf. *South Carolina* v. *Katzenbach*, *supra*.

Petitioner argues (Pet. 5-7), however, that even if the jurisdictional limitation in Section 14(b) is appropriate in other contexts, it is not appropriate if it precludes a plaintiff from vindicating First Amendment rights by requiring him to litigate at substantial expense in a distant forum. The Ninth Circuit, however, correctly rejected this mixed statutory and constitutional claim (Pet. App. A-7 to A-8). First, the legislative history regarding Section 14(b) plainly indicates that the provision is applicable to *all* suits challenging the legality of any part of the Voting Rights Act, in order to assure a uniform interpretation of the requirements of the Act. See S. Rep. No. 162 (Pt. 3), *supra*, at 30-31. Second, *South Carolina* v. *Katzenbach*, *supra*, makes equally clear that the hardship imposed upon a litigant by being forced to litigate in a distant forum is no basis for holding Section 14(b) unconstitutional. Petitioner has an avenue of redress available in the District of Columbia for his constitutional claim; no more is constitutionally required. Since the decision of the court of appeals is based on a correct reading of Section 14(b) and does not conflict with any decision of this Court or any other court of appeals, it does not warrant further review.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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